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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA      *
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                                * 12-cr-140-01-PB
                                * May 23, 2013
                                * 2:15 P.M.
LISA BIRON                    *
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TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government: John P. Kacavas, U.S. Attorney  
Helen Fitzgibbon, AUSA  
53 Pleasant Street  
Concord, NH 03301

For the Defendant: James H. Moir, Esq  
Moir & Rabinowitz, PLLC  
5 Green Street  
Concord, NH 03301

Probation Officer: Melissa Elworthy

Court Reporter: Sandra L. Bailey, LCR, CM, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603)225-1454

1                               BEFORE THE COURT

2                       THE CLERK: Court is in session and has for  
3       consideration a sentencing hearing in United States of  
4       America versus Lisa Biron, Criminal Case No.  
5       12-cr-140-01-PB.

6                       THE COURT: Can I see counsel at sidebar.

7                               AT SIDEBAR

8                       THE COURT: I have a question about the victim  
9       impact statement. My general view, a victim impact  
10      statement should be public, and so I think we ought to  
11      play it in the courtroom. Does anybody have a different  
12      view about that?

13                      MR. KACAVAS: I do not.

14                      MR. MOIR: I don't either, your Honor.

15                      THE COURT: Is there any statutory reason why  
16      that should not happen?

17                      MS. FITZGIBBON: Only for identity of the  
18      child. If we could shut the monitors off like we did  
19      with the display so the minor's face is not visible,  
20      under 3509 we're supposed protect her identity.

21                      THE COURT: Well, if she were here in court we  
22      wouldn't have her testify behind the screen.

23                      MS. FITZGIBBON: That's correct, your Honor,  
24      but --

25                      THE COURT: We don't want to identify her by

1 name.

2 MR. KAVACAS: Judge, we have no problem.

3 THE COURT: The problem I have -- I'll ask the  
4 probation officer to come up. I can't get this to work.  
5 So I hope you have one that works.

6 PROBATION OFFICER: I went to IT yesterday  
7 with it because it wasn't working in my computer either.

8 MR. KAVACAS: We have a copy.

9 MS. FITZGIBBON: Yeah, but it's not -- all the  
10 copies are the same format. I asked the paralegal if  
11 there's a particular program to put it under.

12 THE COURT: So does anybody -- who prepared  
13 this?

14 MS. FITZGIBBON: It was prepared by our office  
15 by a paralegal.

16 THE COURT: And do you have something that --  
17 a way that you can display it?

18 MS. FITZGIBBON: I'm going to ask. She  
19 brought a laptop with her that I believe will probably  
20 play it. Sometimes, too, your Honor --

21 THE COURT: You work with her paralegal so at  
22 the appropriate time we can play it, okay?

23 THE CLERK: Do you want to take a break while  
24 we do this?

25 THE COURT: No. We will just go ahead. It's

1 going to be a while before we get to that, so you can be  
2 working on it to get ready. And if we need to take a  
3 break to set it up, we can do that. So you get your  
4 copy and --

5 MS. FITZGIBBON: Yes, your Honor.

6 IN OPEN COURT

7 THE COURT: All right, Ms. Biron, the  
8 Presentence Investigation Report I have for you was  
9 prepared on May 10th, it was revised on May 20th. Have  
10 you seen that report?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you read it and discussed it  
13 with your attorney?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: Do you feel you understand it?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: Thank you. You can be seated.  
18 Does the government dispute any of the facts or legal  
19 conclusions contained in the report?

20 MS. FITZGIBBON: No, your Honor.

21 THE COURT: The defendant is pressing certain  
22 objections to the report. I'll hear you on those.

23 MR. MOIR: Your Honor, I've stated my  
24 objections in the sentencing memorandum that I provided  
25 to the court and I would incorporate those objections,

1 and I certainly can rest on those if the court would  
2 like --

3 THE COURT: I would rather you didn't because  
4 frankly I don't understand your position. So we need to  
5 go through them one-by-one so that I can understand them  
6 in order to determine whether they have any merit.

7 MR. MOIR: Very good, your Honor. My  
8 objections, the first one I can start with is the 4B1.5.

9 THE COURT: Okay.

10 MR. MOIR: That's the pattern of sexual  
11 activity increase.

12 THE COURT: Do you know which paragraph in the  
13 report that is?

14 MR. MOIR: I have not referred to cross  
15 paragraphs, your Honor, I apologize.

16 THE COURT: Maybe the probation officer can  
17 tell me where it is.

18 PROBATION OFFICER: 116, your Honor.

19 THE COURT: Okay, so let's look at that  
20 paragraph. Okay. There is a five-level increase  
21 applied after Chapter Two and Chapter Three adjustments  
22 are made because the defendant engaged in a pattern of  
23 activity involving prohibited conduct.

24 So if you could just briefly state what your  
25 argument is there.

1           MR. MOIR: My argument basically is this, your  
2 Honor. Referring to the background section of 4B1.5, in  
3 that section it states, and I can quote it, it only  
4 applies if the instant conviction is a sex offense  
5 committed against a minor, which this is of course, and,  
6 it's the conjunctive, the defendant presents a  
7 continuing danger to the public. It seems under the  
8 background section that both those elements are  
9 required. While I would submit the first one clearly  
10 has been met, the second one has not. So based upon  
11 that I would suggest the pattern of sexual activity does  
12 not apply.

13           THE COURT: All right, let me ask you this.  
14 It seems to me that in order to have any potential  
15 effect on the guideline calculation, you must prevail  
16 not only with respect to this argument, but at least one  
17 of your other arguments.

18           MR. MOIR: I agree.

19           THE COURT: Is that right?

20           MR. MOIR: That is correct.

21           THE COURT: So let's lay this one aside for a  
22 minute and look at your next one.

23           MR. MOIR: All right. The second one of  
24 course is how this matter was grouped. That's under  
25 3D1.2.

1           THE COURT:   Okay.   And that's paragraph 112,  
2   deals with the grouping.

3           MR. MOIR:   That's correct.

4           THE COURT:   Okay.   And how do you think they  
5   should be grouped?

6           MR. MOIR:   Well, under -- the way I look at  
7   it, your Honor, is under the grouping the -- it does  
8   state under grouping 3D1.2(d), specifically under that  
9   excludes 2G2.1 from grouping under that subsection.   But  
10   we have to look at the other subsections a, b, and c.  
11   And it does not exclude -- preclude from being included  
12   under there.

13          THE COURT:   Can I just stop you and ask, let's  
14   set aside the technical argument first and just tell me  
15   in words a layperson can understand.   The way this  
16   purports to group is it takes each count of conviction,  
17   which each count having an adjusted offense level of 40,  
18   and provides an increase of five levels.

19          MR. MOIR:   That's correct.

20          THE COURT:   For a total combined offense level  
21   of 45.

22          MR. MOIR:   Right.

23          THE COURT:   What is your position as to how  
24   that should be done?

25          MR. MOIR:   The way I submit it should be done

1 is they should all be grouped together as one which  
2 would have no increase there whatsoever, would not have  
3 the five-level increase.

4 THE COURT: All right. So the theory is even  
5 though she committed six distinct crimes for which she  
6 was convicted -- excuse me, there are eight counts.

7 MR. MOIR: Eight counts altogether, your  
8 Honor.

9 THE COURT: Even though she committed eight  
10 counts of conviction, that she should only be sentenced  
11 as if she had only been convicted of one of those  
12 groups?

13 MR. MOIR: That's correct. That is my  
14 argument because I'm looking at the language in  
15 subsection A where the counts involve the same victim  
16 and same transaction.

17 THE COURT: All right, let's get out the  
18 guideline. Which manual are we using here? Is it the  
19 2012?

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: Okay. Which section of the  
22 guideline are we dealing with?

23 MR. MOIR: 3D1.2(a), your Honor.

24 THE COURT: Let me read what I think is the  
25 correct provision and you tell me if I'm right. All

1 counts involving substantially the same harm shall be  
2 group together into a single group. Counts involving  
3 substantially the same harm within the meaning of this  
4 rule -- excuse me, counts involving substantially the  
5 same harm within the meaning of this rule when counts  
6 involve the same victim and the same act or transaction.

7 MR. MOIR: That's correct.

8 THE COURT: All right. And your position is  
9 that all eight counts here involve the same victim and  
10 the same act or transaction.

11 MR. MOIR: They clearly involved the same  
12 victim, your Honor. Part two, I'm submitting that this  
13 involves the same harm to the same victim.

14 THE COURT: The words are act or transaction.

15 MR. MOIR: Act or transaction, that's correct.

16 THE COURT: Okay. And why do you think these  
17 various counts, which occurred at various times with  
18 various different males in various different places, are  
19 part of the same transaction?

20 MR. MOIR: My focus is on the victim and the  
21 effect upon the victim. I submit that, and maybe it's a  
22 broad interpretation of transaction, but I submit that  
23 the various counts here would constitute the same  
24 transaction.

25 THE COURT: Well, if your standard were

1 correct, which is counts that involve the same victim  
2 should be grouped together without regard to whether  
3 they are from the same act or transaction, your reading  
4 seems to lead superfluous the last part of the sentence.  
5 You would stop, when the counts involve the same victim,  
6 group them all together. And that's not what the  
7 guideline says. It says when the counts involve the  
8 same victim and the same act or transaction.

9               So we need both. We need same victim and same  
10 act or transaction. What's your argument that these are  
11 the same act or transaction?

12               MR. MOIR: My argument that it's the same act  
13 or transaction comes down to the fact that we have,  
14 again, I know I'm sounding somewhat circular here, but  
15 we have the same victim with the same harm, we do have  
16 the activities being similar between them, and therefore  
17 I'm submitting that that would constitute the act, or  
18 transaction, because transaction is a broader term than  
19 act. I think we have different acts here, but we have  
20 the disjunctive there, so to give the word transaction  
21 some meaning, I would submit transaction is broader than  
22 act.

23               THE COURT: Okay, so let's look at the  
24 examples that are given. If you look in the application  
25 notes, and you look at application note three. They

1 provide an example, right?

2 MR. MOIR: Yes.

3 THE COURT: Example six is the defendant is  
4 convicted of two counts of assault on a federal officer  
5 for shooting at the officer on two separate days. The  
6 counts are not to be grouped together.

7 Isn't our case more like that example than all  
8 of the other examples listed there which are examples  
9 that involve multiple convictions coming out of the same  
10 act or transaction?

11 MR. MOIR: My argument is that they are  
12 different, your Honor. The difference that I have here,  
13 again, in the examples they give they have none that are  
14 on all fours with this case.

15 THE COURT: But they give five examples where  
16 they are part of the same act or transaction, and in  
17 each of those cases there are multiple convictions that  
18 arise from conduct that occurs as a part of the same  
19 temporally linked event. It's not just that they have  
20 the same victim. It's there's a temporal link to the  
21 event. And then they give us one example where they  
22 aren't part of the same act or transaction, and that's  
23 where the same person is shot on two separate days.  
24 This seems much more like the latter example than the  
25 former set of examples, doesn't it?

1           MR. MOIR: I agree. It's different from the  
2 former but I don't think they really had much to do with  
3 this at all. This is the one I think the court points  
4 out is closer but its certainly not on the point.

5           Let me just give you another example related  
6 to this case. Some of the convictions of Ms. Biron  
7 involved, again, the filming of sex acts in Canada in a  
8 hotel room. They're all in the same place, same people,  
9 same --

10          THE COURT: And they are grouped; right?

11          MR. MOIR: They could be grouped together, but  
12 they were not grouped together here. I don't believe  
13 so.

14          PROBATION OFFICER: They were not, your Honor.

15          MR. MOIR: They have not been grouped  
16 together.

17          THE COURT: All right, so, I may have a  
18 problem with what the probation officer has done. You  
19 need to explain this to me. Why are not the things that  
20 happened in Canada part of the same act or transaction?

21          PROBATION OFFICER: Because they occurred on  
22 different days and on different times.

23          THE COURT: But as a part of the same trip.

24          PROBATION OFFICER: It was part of the same  
25 trip, your Honor, but I view it as separate acts.

1           THE COURT: All right. Let's go through  
2 exactly how you grouped these, then, okay, and let's  
3 find out if this makes any difference to the analysis.

4           So, you have grouped Counts One, Two and  
5 Eight. What are those?

6           PROBATION OFFICER: Count One involves the  
7 transportation. Transporting the victim across state  
8 lines or across, I should say not state lines here,  
9 national lines over to Canada to engage in sex acts.

10          THE COURT: Ah-hum.

11          PROBATION OFFICER: Count Eight is the  
12 production of child pornography.

13          THE COURT: Arising from the filming in the  
14 hotel room.

15          PROBATION OFFICER: Exactly.

16          MS. FITZGIBBON: Excuse me, Count Eight is  
17 possession, Count Two is production.

18          PROBATION OFFICER: I'm sorry, yes, Count  
19 Eight is possession of the child pornography.

20          THE COURT: Okay. Two is production, Eight is  
21 possession.

22          PROBATION OFFICER: Count Two is actually not  
23 production of child pornography, it's -- that's not the  
24 way it was charged. It was charged by sexual  
25 exploitation of a minor.

1 MS. FITZGIBBON: That's the name of the  
2 statute, your Honor, but it is the production.

3 THE COURT: That's a production charge.

4 MS. FITZGIBBON: That is a production charge,  
5 but it's called the sexual exploitation of a child, yes.

6 THE COURT: Am I missing something? I think  
7 of it as that's what production of child pornography is.

8 PROBATION OFFICER: Right, your Honor,  
9 but that's --

10 THE COURT: That's not the name that the  
11 statute has, but that's what we all know it to be,  
12 production of child pornography. So, does the defense  
13 attorney disagree with that, that Count Two is a  
14 production of child pornography count?

15 MR. MOIR: That's what I believe the  
16 indictment says.

17 THE COURT: Yeah. So, One, Two and Eight all  
18 involve the Canada trip, but there are other counts that  
19 also involve the Canada trip that you haven't grouped.

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: Which counts are those?

22 PROBATION OFFICER: I grouped One, Two and  
23 Eight together because they all involved the Canada  
24 trip.

25 THE COURT: Yeah.

1                   PROBATION OFFICER: And then I grouped One,  
2 Three and Eight together. They involve the Canada trip.  
3 But it's a sexual assault that occurred on a different  
4 day.

5                   THE COURT: All right. Let me ask the  
6 prosecutor. Do you agree with this analysis?

7                   MS. FITZGIBBON: Your Honor, we do agree with  
8 Ms. Elworthy in that the way she did the grouping has  
9 basis in the guidelines, in the law. As we pointed out  
10 in our memo, your Honor, for purposes of this case we  
11 wouldn't have an objection or press an objection if the  
12 Canada trip was seen as one transaction.

13                  THE COURT: If we group these as the Canada  
14 trip, all the offenses being one grouping, how would  
15 that affect your analysis?

16                  PROBATION OFFICER: It would reduce the --  
17 give me one moment, your Honor.

18                  THE COURT: Let me ask if the prosecutor  
19 knows. If we reduce the --

20                  MS. FITZGIBBON: It's less than five so it  
21 does not impact the guideline where it is.

22                  THE COURT: But does it stay at a five-level  
23 enhancement or is it something less than five levels?

24                  MS. FITZGIBBON: I believe it's going to be  
25 less.

1                   PROBATION OFFICER: It is less, your Honor. I  
2 believe it's a three-level enhancement.

3                   MS. FITZGIBBON: I believe three.

4                   THE COURT: How about the -- we need to go  
5 through these counts, then. I want to know from the  
6 prosecutor's standpoint.

7                   MS. FITZGIBBON: Yes.

8                   THE COURT: Let's go through this and if you  
9 accept that the Canada trip, because it involved a  
10 continuous -- the argument that the defense -- let me  
11 just be clear. Mr. Moir's argument is, I don't accept  
12 it to the extent he thinks that all these things that  
13 happened in entirely different places on entirely  
14 different dates with entirely different defendants are  
15 part of the same group. No offense, counsel, there's  
16 just no support in the guideline for that position.

17                   I'm willing to entertain an intermediate  
18 position, which maybe he isn't advancing, but I assume  
19 that if you don't get your all out victory, in the  
20 alternative you'd say you should group by event here and  
21 could include all the Canada charges in one grouping.

22                   MR. MOIR: In fact I considered that and I  
23 discussed that with the probation officer in this case  
24 prior to this. I have taken the position they all  
25 should be grouped. But obviously if the court rejects

1     that I would go to that as the second position.

2                 THE COURT:   Okay.   So that at least seems to  
3     me your position that is worth entertaining because  
4     unlike the fact pattern where the example we're given of  
5     an officer shot on consecutive days, taking a trip to  
6     Canada, and each time you start the camera and film, if  
7     you treat that as entirely distinct event rather than  
8     grouping those, it would seem to me it could arguably  
9     disregard the guideline reference which suggests that if  
10    something is a part of a continuing course of conduct,  
11    it can be considered a part of the same transaction  
12    notwithstanding the fact that some period of time goes  
13    by.   I mean, your position is that if there's a break in  
14    time between production one and production two, even if  
15    it's part of the same trip, part of the same place with  
16    the same victim, the same male participant, that it's a  
17    distinct act and it should not be grouped.

18                PROBATION OFFICER:   Yes, your Honor.

19                THE COURT:   Okay.   And do you understand the  
20    argument that I would expect the defendant to be making  
21    that the guidelines recognize that things that can be  
22    temporally distinct but if they are part of an ongoing  
23    course of conduct, they can be grouped together even  
24    though, say, for example, you kidnap, there's an example  
25    here of kidnapping somebody and assaulting them.   They

1 can be grouped even though they are, occur at slightly  
2 different times.

3 PROBATION OFFICER: Yes, your Honor.

4 THE COURT: Right? So the argument would be,  
5 thinking analogically, the Canada trip is more like  
6 kidnapping somebody and assaulting them while you have  
7 them kidnapped, isn't it?

8 MS. FITZGIBBON: Yes, your Honor.

9 THE COURT: Taking them across the border and  
10 producing child pornography with them on multiple  
11 occasions on that trip is arguably like the example of  
12 kidnapping somebody and assaulting them, isn't it?

13 MR. KAVACAS: Yes, your Honor.

14 THE COURT: Which would sort of suggest that  
15 they should be -- that they should be grouped as one  
16 count for one unit or -- one group as they call it under  
17 the guidelines. Is that reasoning making sense to you?

18 MR. KAVACAS: It does, your Honor. I do  
19 understand. I want to point out, there is case law to  
20 support the probation officer's statement that filming  
21 that takes place on different dates does -- does not  
22 lend itself to grouping. She's absolutely correct  
23 there, your Honor. As our memo pointed out --

24 THE COURT: Well, then, by that reasoning,  
25 taking her across the line, if it occurs differently

1 from the time when you're filming, that shouldn't be  
2 grouped either?

3 MS. FITZGIBBON: Yes, that's correct, your  
4 Honor.

5 THE COURT: If you adopt a mechanical they  
6 must be temporally identical events, otherwise they  
7 don't get grouped, but that's not what the application  
8 notes tell us.

9 MS. FITZGIBBON: And your Honor, as we pointed  
10 out in our memo, we do, and when we ask for a sentence  
11 we do look at the Canada trip as a transaction. And for  
12 that purpose we said that for purposes of this for  
13 grouping, the counts involved in Canada, we would not  
14 press an objection to those counts being grouped, but  
15 certainly we would press an objection to the other  
16 instances being grouped.

17 THE COURT: All right, well, I think taking a  
18 more conservative approach, I'm not faulting the  
19 probation officer here, since the government is prepared  
20 to not object to grouping, we should at least group the  
21 Canada counts which, let's identify those counts, let's  
22 do the grouping, let's see where we come out, okay. So,  
23 what are the Canada counts?

24 MS. FITZGIBBON: Okay, Count One, your Honor,  
25 is the transportation of the child into Canada. Counts

1 Two, Three, Four and Five are sexual exploitation  
2 through the production of child pornography in Canada.  
3 Count Five is a production count that took place in  
4 Manchester. Count Six is a separate production charge  
5 that took place in Manchester -- I'm sorry, Seven is.  
6 And Count Eight is possession.

7 THE COURT: Okay, so your position is that all  
8 of the Canada counts can be grouped in one group and  
9 each of the other charges should be in a distinct group?

10 MS. FITZGIBBON: Yes, your Honor.

11 THE COURT: Okay. Let's run it that way and  
12 tell me how many level increase we have.

13 PROBATION OFFICER: I figured it out exactly  
14 the way the prosecutor had just explained it. That  
15 would amount to a three-level -- three units. So a  
16 three-unit increase which would make it an increase in  
17 offense level of three and combined adjusted offense  
18 level of 43.

19 THE COURT: Okay. So rather than 45 it would  
20 be 43.

21 PROBATION OFFICER: Yes.

22 THE COURT: Which is still above the maximum  
23 that would implicate a life sentence under the guideline  
24 range.

25 PROBATION OFFICER: Yes, your Honor.

1           THE COURT: All right. Everybody agree on  
2 that?

3           MS. FITZGIBBON: Yes.

4           THE COURT: Okay. Now, I'm proposing to  
5 accept your argument to that extent, the extent to which  
6 the government has not objected, and to instruct the  
7 probation officer to recalculate the units along those  
8 lines.

9           Now, you would like to press an argument that  
10 even that recalculation is not legally correct, and just  
11 explain to me why it is that the grouping done in the  
12 manner that the government is prepared to accept does  
13 still not sufficiently address your argument that they  
14 should all be grouped in one count.

15          MR. MOIR: Before I do that can I make a  
16 further interim step that should be considered? What's  
17 happened here is by grouping the Canada trip together,  
18 one of the questions is why not put the transportation  
19 with it because that seems to be all part of the same  
20 transaction.

21          THE COURT: It is.

22          MR. MOIR: So we've got that together, they're  
23 all together?

24          THE COURT: Yes.

25          MR. MOIR: And then we have the possession of

1 the pornographic images.

2 THE COURT: Those are distinct, are they not?

3 MS. FITZGIBBON: Yes, your Honor, because the  
4 possession includes images that were created even after  
5 the Canada trip, and the possession was occurring on the  
6 date of the arrest. So that is not all part of that  
7 transaction. They've added possession other than just  
8 the Canada count.

9 MR. MOIR: And yet the possession of those do  
10 come from the Canada trip and then the New Hampshire  
11 ones. So I guess the question, should they be grouped  
12 together.

13 THE COURT: Will the prosecutor refresh my  
14 memory. What specifically was the evidence introduced  
15 to support the possession charge as a distinct offense  
16 from the production counts?

17 MS. FITZGIBBON: The possession charge, your  
18 Honor, was supported by the computer drive that the  
19 expert testified to that contained all of the images  
20 named in all of those counts, Two through Seven. So, he  
21 testified that on this computer was found images  
22 involving the Canada trip, images involving Manchester  
23 production with another male individual, and the final  
24 count involving the defendant's production of herself.

25 THE COURT: All right. So I just want to be

1 clear about this because nobody has raised this issue  
2 with me. The defendant has not moved to argue that  
3 Count Eight can't be recognized as a distinct count of  
4 conviction. You haven't done that; right?

5 MR. MOIR: That's because I was going for the  
6 entire same grouping.

7 THE COURT: Whether you do or not, though, you  
8 seem to be suggesting that the child pornography  
9 possession charge is duplicative of the counts of  
10 conviction on the manufacturing charges, and that one  
11 cannot be convicted for separate offenses for both  
12 producing a piece of child pornography and possessing  
13 it. Are you making that argument? You haven't made it  
14 up till now.

15 MR. MOIR: I haven't made up till now and I'm  
16 looking at the grouping for this, your Honor, is what  
17 I'm looking at.

18 THE COURT: Yeah, but your argument is  
19 essentially that it is duplicative of the production  
20 charges.

21 MR. MOIR: For the grouping purposes, yes,  
22 that's what I'm arguing.

23 THE COURT: So if you produce child  
24 pornography, you're going to possess it, are you not?

25 MS. FITZGIBBON: Yes, your Honor.

1                   THE COURT: And why, then, can you be  
2 prosecuted for distinct counts of production and  
3 possession?

4                   MS. FITZGIBBON: The possession was an  
5 ongoing, it continued well after the production --

6                   THE COURT: So you commit a separate offense  
7 of possession for every day that you possess a piece of  
8 pornography?

9                   MS. FITZGIBBON: Yes, your Honor.

10                  THE COURT: So if you possess it for day one,  
11 you can be charged in Count One, possessing on  
12 November 1st, and then you can be charged in Count Two,  
13 possession on November 2nd, possession on November 3rd.  
14 Are you really saying that?

15                  MS. FITZGIBBON: No, your Honor. What I'm  
16 saying, your Honor, is the production took place, there  
17 is a way that you could produce and no longer possess.  
18 But when you produce that video --

19                  THE COURT: Right.

20                  MS. FITZGIBBON: -- it was also found on a  
21 separate date separate from the production. Her  
22 possession of those images is a separate offense. I  
23 would have to check, your Honor, because I wasn't --

24                  THE COURT: You're not really giving me very  
25 clear answers to this issue. Now, maybe you could make

1 an argument that to the extent that a separate effort is  
2 made to preserve the images, that that can make you  
3 guilty of possession and that that's a distinct event.  
4 Now, this is something, you know, frankly, that should  
5 have been briefed to me. Do you understand his  
6 argument?

7 MS. FITZGIBBON: I understood what your Honor  
8 brought up. I --

9 THE COURT: There is a problem conceptually in  
10 trying to understand how you can be convicted of both  
11 producing an image and separately possessing it, because  
12 the possession is, I haven't analyzed this, but it would  
13 seem to me probably a lesser included offense within the  
14 act of production, because in order to produce you must  
15 possess. And if that is true, then one cannot be  
16 convicted of both the greater and the lesser included  
17 offense.

18 MS. FITZGIBBON: And, your Honor, I would  
19 brief this, you're right, this is not anything that I  
20 had briefed for today --

21 THE COURT: Let me ask this. If you did not  
22 group the possession charge and you only grouped the  
23 other charges, that is so you'd have three groups of  
24 production, Canada-related offenses including production  
25 and the other two.

1                   PROBATION OFFICER: I think -- can I clarify,  
2 your Honor?

3                   THE COURT: Yes.

4                   PROBATION OFFICER: The possession of child  
5 pornography is grouped with the Canada stuff. It's  
6 grouped three times. I think that's where we're getting  
7 confused about here.

8                   THE COURT: So there's no separate grouping  
9 for possession?

10                  PROBATION OFFICER: No, your Honor.

11                  THE COURT: Well, then, the whole point is a  
12 moot point.

13                  PROBATION OFFICER: Exactly. Count One  
14 through Five and Eight are grouped together. Count Six  
15 and Eight are grouped together. And Count Seven and  
16 Eight are grouped together.

17                  THE COURT: Okay, that's what I -- that makes  
18 perfect sense to me. That's what I thought we were  
19 dealing with. Which is all the Canada counts are  
20 grouped, including possession to the extent possession  
21 is a distinct charge of the Canada-related materials.  
22 All of the other two production events, which are  
23 distinct production events, are grouped. So we have  
24 three groups and we calculate our units for three groups  
25 rather than the way you had done it here.

1                   PROBATION OFFICER: Yes, your Honor.

2                   THE COURT: Okay. And if we use three groups,  
3                   which you agree is an appropriate way to do it, we get a  
4                   total increase of three levels as a result of grouping.

5                   MS. FITZGIBBON: Yes, your Honor.

6                   THE COURT: And I am very comfortable in  
7                   concluding that the way the government says is  
8                   acceptable to it, is in fact a legally permissible way  
9                   of doing it. And I don't see that you have presented  
10                  any persuasive argument to me that that is not an  
11                  acceptable way to group.

12                  So, any last argument you want to make that  
13                  you haven't made up till now?

14                  MR. MOIR: The only argument I make on that,  
15                  your Honor, is I'm trying to distinguish between act and  
16                  transaction. I'm taking a very broad view of  
17                  transaction.

18                  THE COURT: I understand, and I find as a  
19                  matter of fact here that these events are sufficiently  
20                  disparate that they are neither part of the same act or  
21                  transaction if grouped the way I suggest they should be  
22                  grouped.

23                  So I direct the probation officer to modify  
24                  the report to reflect the change that we have identified  
25                  here, both the change to paragraph 112, the change to

1 paragraph 113 and 114 and 115 and any corresponding  
2 changes that are necessary to follow from that. So we  
3 are adjusting the grouping finding of the probation  
4 officer to group it into three groups rather than the  
5 number of groups the probation officer has identified.  
6 The net effect is a 43 rather than a 45, which still  
7 brings your client above life, and renders superfluous  
8 your argument with respect to the five-level increase  
9 under chapter -- excuse me, under paragraph 116. You  
10 see my point? Because I can't get to a higher guideline  
11 than life.

12 MR. MOIR: I understand that.

13 THE COURT: And she gets to life with 43, and  
14 so I don't need to decide anything more than that. I  
15 can simply, it's my view that where that guideline issue  
16 of whether that adjustment applies or not is irrelevant  
17 to my guideline calculation, and I can tell you quite  
18 clearly it won't affect my discretion in how I sentence  
19 regardless of how I resolve that particular issue.  
20 Accordingly, I don't propose to resolve the issue. And  
21 I will simply determine that she has a total offense  
22 level of 43 and not resolve that particular issue.

23 So I overrule your objection with respect to  
24 grouping. I decline to address the specifics of the  
25 legal analysis that pertains to the paragraph 116

1 adjustment because it's unnecessary for me to do so to  
2 calculate the defendant's guideline range, and doing so  
3 would not affect my ultimate sentencing judgment in this  
4 case. And I would propose to determine that the  
5 defendant's total offense level is 43.

6 Do you have other objections that you want to  
7 take up with me?

8 MR. MOIR: There are not, your Honor.

9 THE COURT: Okay. So I otherwise adopt the  
10 findings of fact and conclusions of law set forth in the  
11 report which will be made a part of the record under  
12 seal.

13 I determine that the defendant's total offense  
14 level is 43. Her Criminal History Category is I. The  
15 guideline sentencing range for this defendant is life.

16 Does the probation officer -- have I made  
17 myself sufficiently clear? I apologize if I haven't  
18 been, but do you --

19 PROBATION OFFICER: Yes, your Honor, I totally  
20 understand.

21 THE COURT: Okay, okay, good. Okay, so, we've  
22 now got a guideline range. The defendant has a motion  
23 for a variance, but I will hear the government on its  
24 recommendation first.

25 MS. FITZGIBBON: Your Honor, the government's

1 recommended a sentence of 100 years, and based on the  
2 following implementation if you will: We're asking the  
3 court to sentence the defendant to the 10-year minimum  
4 mandatory on Count One. That is the transportation  
5 count.

6 We're asking that the court sentence the  
7 defendant --

8 THE COURT: Isn't the maximum sentence on that  
9 life?

10 MS. FITZGIBBON: Yes, your Honor. I'm sorry,  
11 it's the minimum mandatory.

12 THE COURT: Why don't we just give her -- why  
13 don't we just give her, if you want a hundred years,  
14 just give her a hundred years on Count One?

15 MS. FITZGIBBON: Your Honor, I think it's  
16 important to note the harm that's perpetrated in each of  
17 the other counts and have a sentence associated with  
18 those counts.

19 THE COURT: To me that seems, I mean, what we  
20 do is -- well, let's assume a hundred years were right.  
21 We give a hundred years on Count One. We would give  
22 30 years on Count Two through Seven, whatever the  
23 statutory maximum is, to run concurrent with a hundred  
24 year sentence. That's an acceptable way to achieve a  
25 hundred year sentence, isn't it?

1                   PROBATION OFFICER: Yes, your Honor.

2                   THE COURT: Why wouldn't we do that?

3                   MS. FITZGIBBON: Again, your Honor, simply we  
4                   were asking that you look at each of the harms  
5                   perpetrated in the creation of the child pornography and  
6                   recognize those. For instance, the production of those  
7                   --

8                   THE COURT: Well, I'm giving her statutory --  
9                   if I bought your argument, I'd be giving the statutory  
10                  maximum sentence for every one of the other offenses,  
11                  because none of them have a life sentence as a statutory  
12                  maximum.

13                  MS. FITZGIBBON: Actually --

14                  THE COURT: So you would be getting the  
15                  statutory maximum on Two, Three, Four, Five, Six, Seven,  
16                  Eight. I don't know why -- you're asking me something  
17                  we don't do. I mean this almost never happens. You  
18                  want a sentence on each one and then run each one  
19                  consecutive to get to -- that's not the way it's done in  
20                  federal court.

21                  MS. FITZGIBBON: Four consecutive, your Honor,  
22                  we're asking with four running concurrently.

23                  THE COURT: Can I legally do that? I can.  
24                  But it just unnecessarily complicates the analysis in my  
25                  view. I mean, am I missing something? I ask the

1 probation officer. We normally run, we take the longer  
2 sentence, impose it, and then run concurrent sentences  
3 on the other counts, don't we?

4 PROBATION OFFICER: In most cases we do do  
5 that, your Honor.

6 THE COURT: What would be the benefit of  
7 running certain sentences consecutive?

8 PROBATION OFFICER: The benefit, when we're  
9 dealing with cases when there's victims, a lot of times  
10 we will do, I shouldn't say we, a lot of times the  
11 prosecutor will ask for sentences based on specific  
12 counts to reflect certain harms to those victims.

13 THE COURT: I almost never see that, frankly.  
14 I can't remember in 20 years more than a handful of  
15 times where that's been done. But there's nothing  
16 illegal about it. But here we have one victim, so I  
17 don't know why that argument would apply at all.

18 PROBATION OFFICER: Correct.

19 THE COURT: So, any other benefit to doing it  
20 the way you're suggesting?

21 MS. FITZGIBBON: The benefit, to expand a  
22 little bit, yeah, the grouping, just as we addressed  
23 with the grouping, your Honor, the United States  
24 Attorney's office looks at this, the various charges as  
25 very clear episodes of harm. And again, recognizing the

1 individual --

2 THE COURT: Yeah, that's great for purposes of  
3 conviction, but I'm imposing one sentence, and to treat  
4 -- this isn't a game. This is really serious stuff and  
5 we have to look at this holistically and try to come up  
6 with the right sentence. So, you know, trying to treat  
7 it as if I have separate judges sentencing the defendant  
8 on separate dates for separate offenses is a kind of  
9 mechanical approach that doesn't allow for a holistic  
10 recognition of the harm that flows from this criminal  
11 conduct. So I'm not inclined to do it that way.

12 MS. FITZGIBBON: Your Honor, if I may.  
13 Strictly when I speak of episodic, we also -- the  
14 sentence, if the court were to grant a hundred-year  
15 sentence on the transportation of a minor across state  
16 lines, the transportation of a minor across state lines  
17 for illegal purposes could obviously include any variety  
18 of harm. In this case we are asking you to not just  
19 recognize that transportation, because that of course  
20 involves the Canada offenses, but the very serious  
21 nature of the harm that took place in Manchester --

22 THE COURT: Bu I guess my point is, when I  
23 view somebody -- when somebody is in front of me for  
24 sentencing on multiple counts, I issue one sentence that  
25 captures correctly the reasonable sentence for the

1     conduct that is in front of me. And to make these  
2     distinctions, like if you're thinking that, oh, if I  
3     imposed a hundred-year sentence on transportation, that  
4     would be excessive because just looking at the  
5     transportation in isolation, that would be too high a  
6     sentence. I don't know, I mean, maybe other judges do  
7     that. I don't. I've never done that. I look at what  
8     did this defendant do wrong that I'm sentencing her for.  
9     And I look at that and say what's the right sentence  
10    ultimately for all of that conduct that I can legally  
11    sentence her for. And how I apportion it among the  
12    statutes is really of no practical importance.

13               MS. FITZGIBBON: Then your Honor, if your  
14    Honor chooses not --

15               THE COURT: If I'm making a mistake by doing  
16    that, tell me why.

17               MS. FITZGIBBON: No, your Honor. I understand  
18    what the court is saying. Perhaps I should couch it in  
19    terms of it's important that the court understands, too,  
20    that a hundred years was not pulled from nowhere. That  
21    very much our recommendation to you is based on --

22               THE COURT: Well, you can make your argument  
23    that I think that ten years is for this and another ten  
24    years for that and then 30 years for this and that's how  
25    we get up, I mean, but, you can make that argument, but

1 just the very fact that magically it happens to end up  
2 as the round number of 100 suggests to me that that's  
3 not in fact how you did your analysis, because it's much  
4 more likely to come out at something like 92 or 105.  
5 And the fact you came out with the magic number of 100  
6 suggests that somebody did what I'm suggesting should be  
7 done, which is to look holistically at the crimes and  
8 determine what an appropriate sentence is for them.  
9 It's not to do this kind of adding up as if I know  
10 nothing about the nature of these crimes in total. It's  
11 like, okay, put blinders on, analyze the first one. Now  
12 I'm done with that. Now put blinders on and analyze the  
13 second. That's not the way judges sentence.

14 MS. FITZGIBBON: Actually, your Honor, the  
15 number was arrived at by taking the three episodes that  
16 we have --

17 THE COURT: It's just a magical chance that it  
18 came out to the round number of 100.

19 MS. FITZGIBBON: If you have three episodes of  
20 child pornography as we have, your Honor, and go with  
21 the statutory maximum on those, because we will argue to  
22 you that because there's no mitigating we're asking for  
23 the maximum on each of those episodes, and then add the  
24 10-year minimum mandatory for taking --

25 THE COURT: That's four charges out of eight,

1 so you're not giving any harm to the other four charges?

2 MS. FITZGIBBON: On the possession, your  
3 Honor, we thought that that was a number that would most  
4 likely because that isn't a the min. or a man.

5 THE COURT: All right, that's five. You add  
6 zero for that. Now what -- you add zero on the other  
7 three charges.

8 MS. FITZGIBBON: Because of the episodic  
9 nature of them, your Honor, we had chosen and ask you to  
10 sentence one mass in Canada.

11 THE COURT: Okay, that argument isn't cutting  
12 any slack with me. Please argue to me why a hundred-  
13 year sentence is the right sentence given all of the  
14 wrong things that the defendant did for which she was  
15 convicted and can be sentenced.

16 MS. FITZGIBBON: For all of the wrong things  
17 that the defendant did, your Honor, it is difficult to  
18 consider, to come up with a sentence that --

19 THE COURT: Why not ask for a life sentence?

20 MS. FITZGIBBON: Your Honor, a life sentence  
21 would not be out of the range of reasonableness for this  
22 defendant. And in a sense we are asking you for a life  
23 sentence because we're asking you to impose 100 years.

24 THE COURT: Well, a 40-year sentence would be  
25 a life sentence. A 50-year sentence would be a life

1 sentence. A 60-year sentence would be a life sentence.  
2 High probabilities. And we would just be knocking off  
3 what is the probability that it's not a life sentence.  
4 A 60-year sentence here, she's in her forties, right?  
5 Do you think in prison she's likely to live beyond a  
6 hundred? No. So a 60-year, that's probably a  
7 98 percent likelihood of being a life sentence. A  
8 50-year sentence probably has a 90 percent likelihood of  
9 being a life sentence. A 40-year sentence probably has  
10 an 80 percent likelihood of being a life sentence. A  
11 hundred years has a hundred percent likelihood of being  
12 a life sentence. But why not just ask for a life  
13 sentence then?

14 MS. FITZGIBBON: And, your Honor, when we were  
15 faced with this similar situation in a recent case where  
16 the sentence was over a hundred years, that is the exact  
17 question. When you are looking at a sentence that is  
18 essentially a life sentence, where is the right number  
19 in that range, particularly when you're faced with a  
20 situation like this one where there's really no number  
21 that captures justice for what was done here. And I  
22 really am not trying to debate the court. It seriously  
23 was something that we considered in looking at things  
24 episodically and looking at the statutory structure.

25 THE COURT: I think that gives you a false

1 sense that you've done something meaningful. That's my  
2 view. So I'm not inclined to take that approach. I  
3 must struggle with the harder question of what's the  
4 right sentence for this defendant given the horrible  
5 crimes that she has committed. I think that's the  
6 responsibility here.

7               So, I understand for you there might be  
8 symbolic value of giving somebody a hundred years, many,  
9 many decades longer than she will in fact live, but I'm  
10 not sure that it really answers the questions of what's  
11 the right sentence for this defendant.

12              Help me try to figure out what the right  
13 sentence is.

14              MS. FITZGIBBON: The right sentence, your  
15 Honor, is a sentence that insures her having a life  
16 sentence. This, and again --

17              THE COURT: Let me ask you this. You have a  
18 victim witness coordinator who works out of your office?

19              MS. FITZGIBBON: We do, your Honor.

20              THE COURT: And part of that victim  
21 coordinator's job is present to the court victim impact  
22 statements?

23              MS. FITZGIBBON: Yes, your Honor.

24              THE COURT: Do you think victim impact  
25 statements should be irrelevant to the court's

1 sentencing consideration?

2 MS. FITZGIBBON: They should not be  
3 irrelevant, your Honor, but they should also not be  
4 controlling.

5 THE COURT: I agree they shouldn't be  
6 controlling, but they should be relevant, should they  
7 not?

8 MS. FITZGIBBON: They are never irrelevant to  
9 the court, your Honor.

10 THE COURT: Okay. So, in a case in which a  
11 victim has been egregiously harmed and want to convey  
12 that harm to the court in order to try to obtain a  
13 higher sentence, the court should listen to that victim  
14 and consider the impact of the crime on that victim;  
15 right?

16 MS. FITZGIBBON: The court should, your Honor.  
17 Particularly in the instance of children victims, I have  
18 seen your Honor listen to those statements but also  
19 acknowledge that children victims don't always have the  
20 right analysis of what is the right sentence for the  
21 perpetrator.

22 THE COURT: No, but I think we can agree, can  
23 we not, that victim statements are worthy of  
24 consideration when a judge sentences.

25 MS. FITZGIBBON: Absolutely.

1           THE COURT: Okay. In this particular case we  
2 have a victim who has been, in my view, deeply damaged  
3 by the defendant's egregious misconduct. Do you agree  
4 with that?

5           MS. FITZGIBBON: Yes, your Honor.

6           THE COURT: Do you think it is a relevant  
7 consideration to sentencing how the sentence may affect  
8 the victim's ability to deal with the egregious harm  
9 that has been done to her?

10          MS. FITZGIBBON: I do, your Honor. I think  
11 that the problem with that, however, is we don't know  
12 right now what the long-term affect of this damage is or  
13 what, any action that takes place today is going to have  
14 on this child down the road.

15          THE COURT: Should I give some consideration  
16 to what the victim thinks at the moment about what would  
17 help her best with her effort to address the trauma that  
18 she suffered?

19          MS. FITZGIBBON: I would always assume that  
20 the court would take into consideration that.

21          THE COURT: You know why I'm raising this  
22 question?

23          MS. FITZGIBBON: I do, your Honor.

24          THE COURT: So, the victim here wrongly, and I  
25 think egregiously wrongly, has assumed a sense of guilt

1 for the conduct that she has suffered at the hands of  
2 this defendant and has expressed a concern to the court,  
3 and we will see in the victim, I haven't seen it but it  
4 has been described to me, in the victim impact  
5 statement, that she does not want the court to impose a  
6 life sentence. Should I consider that?

7 MS. FITZGIBBON: You should consider it, your  
8 Honor, just as I know it was considered in other cases  
9 as well. There was a case in this court involving a  
10 60-year sentence where the child, who had been a victim  
11 of assaults, didn't want that perpetrator going to jail  
12 for the rest of his life, asked can he stay out the rest  
13 of his life. It was certainly considered, but I believe  
14 the court's overwhelming response was that the harm was  
15 too egregious and that the sentence did in fact turn out  
16 to be a number of years that equaled a life sentence.

17 THE COURT: A sentencing seeks to vindicate  
18 primarily society's interest in seeing that a criminal  
19 defendant is appropriately held to account for her  
20 criminal conduct. I think we would agree on that, would  
21 we not?

22 MS. FITZGIBBON: Yes.

23 THE COURT: But the law recognizes the victim  
24 should be allowed to have a say in the sentencing  
25 process. And so the struggle I'm having here is I want

1 to pay due respect to the victim's concerns here while  
2 not surrendering my obligation to see that society's  
3 interests are vindicated. But I think particularly  
4 where we have a very damaged young person here, who is  
5 not so young as to have her voice be completely  
6 disregarded, she's a person capable of autonomous  
7 decision making, that I should, when I sentence here, to  
8 some degree try to take into account how the sentence  
9 might affect or aid her ability to deal with the trauma  
10 that she has suffered. Isn't that a fair thing to do?

11 MS. FITZGIBBON: It is fair. I would ask,  
12 your Honor, that when your Honor does consider that, you  
13 take into account also the temporal nexus here in time.  
14 At the time of the trial, obviously, and the testimony  
15 you heard from witnesses, you're right, this child was  
16 someone who believed she was an equal partner in the  
17 crime here that she took responsibility. She has made  
18 progress in that. I believe she will continue to make  
19 progress in getting away from that.

20 THE COURT: The goal is to see that hopefully  
21 she can get to the point of recognizing that she is  
22 100 percent victim and this defendant is 100 percent  
23 perpetrator.

24 MS. FITZGIBBON: Correct, your Honor.

25 THE COURT: And we want to try to speed that

1 goal, certainly all of us who have had any involvement  
2 in this case, would like to see that happen. I have  
3 other considerations, obviously, that I have to take  
4 into account in sentencing. But I think I should at  
5 least be mindful of how my sentence might impact that  
6 victim and to try to make some reasoned assessment about  
7 whether this sentence or that sentence might have some  
8 bearing on her, helping her come to the realization here  
9 that you have no reason to feel guilt for the  
10 victimization you have suffered. And when considering  
11 whether it's a hundred years or 80 or 60 or 40, which  
12 are all close to life sentences, it may be worth  
13 considering how an ultimate judgment as to which of  
14 those period of years is right will impact the victim.  
15 Isn't it something I should at least consider?

16 MS. FITZGIBBON: Yes, I would agree that you  
17 can consider that, should consider that, your Honor.

18 THE COURT: Okay. So, I mean we will hear  
19 from the defendant. So maybe that's perhaps what I  
20 should do, is give defense counsel an argument, he's  
21 arguing for I think a 15-year sentence, let him make his  
22 argument, then you can respond to it. But I have to say  
23 I think, despite your attempt to come up with a  
24 mechanical justification for a hundred years, I'm not  
25 faulting you. It's an arbitrarily chosen number that is

1       vastly in excess of the defendant's lifespan, and I'm  
2       not convinced that I should simply accept it. So we  
3       will see what the defendant has to say and then we will  
4       move on from there.

5               MR. MOIR: Thank you, your Honor. I'll just  
6       go to the podium. My eyes are not as good as they used  
7       to be.

8               I guess I want to start that what I'm saying  
9       here is not meant to justify, to excuse, even to  
10      explain. There's no question that the court knows, and  
11      everyone in this courtroom here, knows that the actions  
12      that Lisa Biron took were certainly morally  
13      reprehensible. I mean she's a mother and she completely  
14      abdicated her responsibility as a mother. I mean, she  
15      led her daughter into situations which, for the daughter  
16      in so many ways, were extremely dangerous and extremely  
17      harmful. Again, it's not an excuse, it's not a  
18      justification, and under the law she of course must be  
19      punished.

20              The moral is off the charts, your Honor.  
21      There's no question about it. I think everyone who  
22      knows about this case has been shocked that a mother can  
23      do this. I want to acknowledge that and somewhat set  
24      that aside and look at the criminal though.

25              Under the law the court is --

1           THE COURT: Well, my job is to sentence in  
2 accordance with the sentencing statute. So let's set  
3 aside the term moral for the moment.

4           MR. MOIR: All right.

5           THE COURT: Let's look at what is the relevant  
6 consideration which is a just sentence. Deal with it in  
7 that term.

8           MR. MOIR: The only reason I bring up the  
9 moral, your Honor, is that absolutely anybody I've  
10 talked to about this case has said, oh, my God, how can  
11 a mother do that? And that really to a great degree is  
12 --

13          THE COURT: Yeah, but this sentence is not  
14 going to be about sexual promiscuity, alcohol and drug  
15 abuse. This is going to be a sentence based on the  
16 counts of conviction and the victimization that was  
17 reflected in those counts of conviction. And the  
18 primary hurdle for you is not to -- I don't think you  
19 can separate out the concept of a just sentence from  
20 what you call the criminality. Set aside morality, but  
21 just sentence requires me to take into account the  
22 seriousness of the wrongs that have been done here.

23          MR. MOIR: I agree, your Honor, and I  
24 certainly don't say that you should not consider that.

25          As the court knows so well, punishment that's

1 to be imposed is to be sufficient but not greater than  
2 necessary to comply with the purposes of sentencing.

3           Having said that, my central argument in this  
4 is that of course there's no doubt that Lisa Biron's  
5 actions were highly criminal. They deserve punishment.  
6 Again, she abdicated responsibility. But what is the  
7 appropriate punishment? As the court has noted, the  
8 state has requested a sentence of a hundred years. And  
9 as I think the court has pointed out as well, that's a  
10 life sentence. Many sentences less than that would in  
11 effect be a life sentence. And so the question is --

12           THE COURT: Well, if I were going to impose a  
13 hundred-year sentence, I would simply impose a life  
14 sentence.

15           MR. MOIR: And I think that would probably be  
16 appropriate because a hundred-year sentence, we're  
17 dealing with almost old testament lifespans at that  
18 point. Doesn't make a lot of sense.

19           But the first thing I'd like to look at, your  
20 Honor, is what the defendant did in this case. What  
21 were the charges. What did she do.

22           As the court knows, the main count number one  
23 is transporting your child to Canada. Staying in a  
24 hotel for three days. Her daughter having sex, sex for  
25 the first time with this gentleman Kevin up there who

1 testified. Prior to that he was sort of her online  
2 boyfriend, virtual boyfriend, then the real boyfriend.  
3 And during the course of that time Ms. Biron transported  
4 her up for this purpose, and then when up there takes  
5 three videos and one still picture which the court saw.

6 THE COURT: You want to deal with this in an  
7 atomistic way, but you tell me whether my take on this  
8 is right or not. My take on this is that your client  
9 used the victim as bait for her own personal sexual  
10 gratification. She used it as a way to lure young men  
11 into having sex with her, and by using her child as an  
12 object, an inhuman object to exploit so that she could  
13 pursue her interest in sexual gratification with young  
14 men. That's my take having sat through the trial. Is  
15 that wrong?

16 MR. MOIR: I think we have lots of different  
17 interpretations, your Honor. I'm not saying --  
18 obviously that's the court's interpretation of this. I  
19 find what happened, again, as pointed out in the  
20 evaluation that was provided, something that was quite a  
21 bit less conscious or premeditated than that.

22 THE COURT: Well, it is true that she,  
23 according to the reports, led a very sexually  
24 promiscuous lifestyle as a young woman, and she wanted  
25 to get back to that. And the way she could get back to

1 it as a 40-year-old woman who is interested in having  
2 sex with 19, 20-year-old boys is to place an  
3 advertisement on Craig's List for have sex with a, what  
4 was it, 38-year-old woman and her 19-year-old roommate.  
5 That looks like a lure to young men. Come to my house  
6 so that we can have sex, and you can have sex with the  
7 19-year-old roommate while you're there. That's why I'm  
8 thinking this. She proposes going up to Canada. And  
9 she has sex with the boy in the room. Isn't that what  
10 this was all about?

11 MR. MOIR: You see, I don't think it was so  
12 conscious and so planned and premeditated. The way I  
13 look at it, your Honor, and I think it was pointed out  
14 in my sentencing memo as well as in the psychological  
15 evaluation, where Ms. Biron had been attempting to lead  
16 a good life. She had abandoned that prior life and for  
17 ten years managed to hold things together. I suggest to  
18 the court it was an incredibly fragile structure she put  
19 together. And then when her husband leaves, she has the  
20 problems, stressors in her life, and once she starts  
21 drinking, she starts going down the rabbit hole. And I  
22 don't think what was happening there were a lot of  
23 things that were conscious. I think that she was doing  
24 this, there's no question about it, all those things you  
25 talk about, but I don't think it was like, oh, let me

1 hold my daughter out here as bait so I can, I don't  
2 think it was that conscious.

3 THE COURT: Well, I think your expert does not  
4 in any way suggest that she suffers from any kind of  
5 psychological disorder that prevented her from being  
6 able to make rational and informed calculations. I do  
7 agree with you, however, that she was -- she committed  
8 these crimes during a period of extraordinary stress in  
9 her life. She had been abandoned by her husband. She  
10 had, was experiencing extraordinary financial  
11 difficulty. She lapsed into drug use and alcohol use,  
12 and these crimes followed that descent. And I will also  
13 acknowledge that she had a period of about a decade in  
14 which she was extremely religiously observant and as far  
15 as we can tell not engaging in any criminal activity  
16 during that ten-year period. And this series of events  
17 follow from that. I will acknowledge all of that. But  
18 frankly I can't see much in there that really suggests  
19 anything mitigating about the conduct.

20 MR. MOIR: Well, as I've indicated to the  
21 court before when I started off, I'm not trying to offer  
22 this to justify or excuse.

23 THE COURT: No, and I appreciate that.

24 MR. MOIR: It really isn't, because there is  
25 no justification or excuse. What I'm trying to do is

1 put it in some larger concept. Because the court said,  
2 we're looking at this holistically. I know you're  
3 looking at sentences, but I'm looking at the person as  
4 well to try to maybe understand a little bit. And so  
5 I'm not trying to break these out, you know, bit by bit,  
6 because I think if we look at the whole picture with  
7 that understanding at least, I think that would lead us  
8 to what would be a just sentence in the case.

9 If I could just go on. The court knows that  
10 the videotapes that were taken up in Canada were all  
11 very brief, and I think even the government agrees never  
12 were meant for distribution. Same goes with the --

13 THE COURT: Can you refresh my recollection as  
14 to, I agree with you that there's no evidence that they  
15 were distributed over the Internet, that they were sold,  
16 that they were intended for mass viewing, none of that  
17 that I'm aware of. I do recall testimony about them  
18 being shown to individuals with whom she was either  
19 wanting to have sex or trying to develop a sexual  
20 relationship. Can you refresh my memory about that?

21 MR. MOIR: Yes. I believe the person you're  
22 talking about is Brandon Ore who testified in the case.  
23 He was already involved in a sexual relationship with  
24 the daughter, and he testified that at one point he was  
25 shown I believe one of the videos. And that's because

1     it had a, I'll put it, quote, a comic noise that came  
2     off, and that's why it was shown. And it was --

3             THE COURT: Your point is she was just taking  
4     these for her own personal purposes.

5             MR. MOIR: Even as it says in the  
6     psychological evaluation, it was done as a sort of  
7     warped memento. That's really what I would call it.  
8     That's how it was explained. Because if you wanted to  
9     create a porno, so to speak, your Honor, you're not  
10    going to do a 34-second clip of, you know, of the action  
11    going on and one can hear the laughter, and I suggest  
12    you can hear the drunkenness too going on. These things  
13    were just little clips made for whatever perverse  
14    purpose. But the purpose was again, not to distribute,  
15    not to sell, not to post on the Internet, nothing like  
16    that. They were kept as a memento of some sort. And  
17    the same goes for all the videos, your Honor. And so  
18    when I look at this, I say all right, had she not taken  
19    the videos, let's say she did everything else but the  
20    camera never came out in any of these situations, she  
21    would have committed a number of federal crimes right  
22    there. She certainly would have with the  
23    transportation. No question about that. She certainly  
24    would have had a sexual assault with her own actions.  
25    Those kind of things. And if I look at those, and I put

1     this in my sentencing memorandum, if you took away the  
2     videos which of course are the bulk of the offenses  
3     here, where would we have ended up? We certainly  
4     wouldn't be ending up at a life sentence. Under the way  
5     I quickly calculate under the guidelines, we'd probably  
6     be looking more like 10 or 12 years, the worst case  
7     scenario on those.

8                 THE COURT: Well, under the guidelines, but  
9     that doesn't take into account the crimes she has  
10    committed in this particular case.

11                MR. MOIR: I understand. But all I'm trying  
12    to make the point here, your Honor, that these videos  
13    that were made were all very brief, none meant for  
14    distribution, none for commercial activities, nothing  
15    like that. And it is those videos, those crimes that  
16    were committed, take this from a 10, 12-year sentence  
17    and go up to, as the government would like, a hundred-  
18    year sentence or a life sentence, it's those things  
19    which I think you total them altogether are maybe five  
20    minutes, again were not meant for distribution, nothing  
21    else but sort of a strange memento.

22                The reason I'm pointing this out, your Honor,  
23    is that I am asking a 15-year sentence. And what that  
24    does is takes those videos there and adds on, I would  
25    submit, at least three or four years on to the

1 underlying offenses for the videos, if the court  
2 understands what I'm saying here.

3 THE COURT: I understand what you're saying.  
4 But I also, as I don't accept the government's  
5 mechanistic approach which seems to calculate the  
6 hundred years by trying to view each count of conviction  
7 with blinders on, I also don't accept your view that I  
8 should look at the, each offense in kind of a mechanical  
9 fashion in light of what the elements of that offense  
10 are, and in short, the inconsequential of the making of  
11 the videos are. To me that's almost beside the point  
12 here. We look at, I believe I'm entitled to consider  
13 the course of conduct for which the defendant was  
14 convicted here. And in considering what a just sentence  
15 is, I need to consider what it is she did. And that's  
16 what, to me, what she did, and if you think this  
17 inference is unsustainable from this record or that it's  
18 improper for me to consider it this way, you need to  
19 tell me. But what she did was embark on a pattern of  
20 conduct in which to satisfy her own interest in having  
21 sex with young men, she chose to use her vulnerable  
22 daughter and exploit her by engaging in -- having her  
23 engage in sexual acts with other men and filming those  
24 acts in a way that used her to achieve an end for her,  
25 Ms. Biron, which is just sexual gratification. She

1     wanted to have sex with young men and this was the way  
2     she figured out how she could do it, and she was willing  
3     to do what was necessary to achieve those ends.

4                 Let me ask the prosecutor. Am I  
5     misunderstanding what this case is all about from your  
6     perspective?

7                 MS. FITZGIBBON: Your Honor, I think you have  
8     a large part of it and I think there's even more because  
9     of course there's also the defendant's own sexual  
10    assault of her daughter.

11                THE COURT: Well, I don't want to diminish  
12    that, but in my mind, that again is part of the  
13    recruitment effort to use her -- what I think is going  
14    on here, in the defendant's history, you don't have  
15    history of her showing interest in molesting teenage  
16    girls, and you don't have evidence showing she has  
17    involvement in lesbian sex except to the extent it's  
18    involved in group sex. The primary driver of all this  
19    seems to be, to me, wanting to use her daughter, make  
20    child pornography with her daughter, take her up to  
21    Canada, have sex with young men, so that she, Ms. Biron,  
22    can have sex with young men.

23                MS. FITZGIBBON: Yes, your Honor, we would  
24    agree that yes, that she totally objectified this child  
25    in her own hedonistic pleasure and a way to be around

1 19, 18, 20-year-old young men, absolutely.

2 THE COURT: Okay. You will get a chance. Go  
3 ahead.

4 MR. MOIR: I'm not disagreeing with the  
5 court's interpretation. The court could see it this  
6 way. The one thing that comes out, though, is if you  
7 look at the videos that were taken, they were not made  
8 in furtherance of the end as the court points out. They  
9 were incidental to that. If she wants to have sex with  
10 men, I think if the courts looks at the facts of this  
11 case, those videos had nothing to do with recruiting  
12 men, getting men in the house, anything like that. As  
13 the court points out, Craig's List, yes, that had a lot  
14 to do with it. The PSR talks about a lot of those  
15 things. But the videos that were taken here were  
16 completely incidental to all that. They weren't used as  
17 a lure or anything like that. That's not to say they're  
18 not crimes, of course they are, that's what she was  
19 convicted of. But I'm just trying to put these videos  
20 themselves in context because in effect the creation of  
21 all those videos, those are the things that make the  
22 sentence in the case, under the guidelines, so  
23 astronomical.

24 THE COURT: Not under the statutory scheme.  
25 It's the taking her across the line to Canada that makes

1 it eligible for a life sentence.

2 MR. MOIR: It does, it does, but if you look  
3 at the minimum on that, that minimum is less, it's ten  
4 to life versus the other one which is 15 to 30. I'm  
5 trying to put the videos in context here, your Honor.  
6 They were not the lures. They had nothing to do with  
7 that. They were again -- you saw them. You saw how  
8 they were short, they were drunken, they were -- I  
9 shouldn't use the word jokey, but they were, if you look  
10 at that, and as bad as they are, that's the point they  
11 were made. It's like some drunken kids with an iPhone.

12 THE COURT: Well, the ones in Canada were.

13 MR. MOIR: Yes.

14 THE COURT: The one of her having oral sex  
15 with her daughter wasn't. That wasn't jokey.

16 MR. MOIR: I don't disagree with that. In any  
17 event, your Honor, looking at 2G2.1, which is where we  
18 were looking under this as far as sentencing guidelines,  
19 that does cover a wide range of offenses. It covers not  
20 only sexual exploitation of children but also sex  
21 trafficking in children, production of sexually explicit  
22 depictions of minors for importation. I mean, the  
23 heartland of that is looking at those in the business of  
24 producing child pornography for profit, for commercial  
25 and for distribution. I agree --

1           THE COURT: We don't have that here. I'm not  
2     sentencing her as a person who's trying to engage in the  
3     production of child pornography for profit.

4           MR. MOIR: Right.

5           THE COURT: I'm not considering that at all.

6           MR. MOIR: And what I'm stating this for is  
7     that a maximum sentence should be reserved for, again,  
8     the worst possible variation of the crime and the most  
9     dangerous offenders. I'm not --

10          THE COURT: I guess I'm having trouble seeing  
11     why this isn't one of the worst possible variations of  
12     the crime given the betrayal of trust that was involved.

13          MR. MOIR: It is a betrayal of trust, your  
14     Honor, there's no question about it, and no question  
15     damage is done. I'm not disagreeing with the court on  
16     that. But every case like this is going to have,  
17     whether it's a stranger or a mother or anything else, is  
18     going to have those elements involved.

19          THE COURT: You see, when being victimized by  
20     her mother under circumstances that leaves her feeling  
21     guilty for her own victimization, you get at the heart  
22     of what this crime is all about and why it is so  
23     egregiously wrong and why a just sentence calls for a  
24     very substantial period of incarceration. It isn't  
25     because she was going to go into the business of

1 producing videos for profit to sell on the Internet. It  
2 was that she was willing to use her daughter as an  
3 object to achieve sexual gratification for herself and  
4 committed these crimes to that end, in a way that  
5 betrayed a fundamental trust and left her daughter  
6 extraordinarily harmed and feeling guilty for her on  
7 victimization. That's the harm.

8 MR. MOIR: I don't disagree that's the harm.  
9 But the question then comes down to, we have a person  
10 who, as the court knows, has no criminal history, is  
11 looking at a prison sentence, even what I'm requesting  
12 of course which is the statutory minimum, of 15 years,  
13 which is an incredibly substantial period of time. And  
14 I don't pretend to speak for the victim here. I don't.  
15 I don't have any contact with her. I have heard via the  
16 court what her position is here. But if we're worried  
17 about further harm to the victim by this defendant, even  
18 under 15 years she will have long been an adult and  
19 there can't be any harm, further harm caused by this  
20 mother to her daughter. I don't think there's any  
21 evidence here, your Honor, that this defendant poses a  
22 harm to other people out on the streets. In fact, with  
23 supervision and with counseling, with this kind of thing  
24 which certainly supervision will be required, reporting  
25 all those things, I submit that she will not be a danger

1 to the community.

2 Obviously the court has other things to  
3 consider when we're talking about sentencing.  
4 Seriousness of the offense, respect for the law, those  
5 kind of things. The way I'm looking at this, your  
6 Honor, yes, it's serious, serious, serious. A 15-year  
7 sentence is extremely serious, particularly somebody who  
8 has never been to court before, never been to jail  
9 before.

10 I guess I'm submitting at the end of the day,  
11 your Honor, that under the sentencing provisions of  
12 U.S.C Section 3553(a), that a 15-year sentence in this  
13 case is sufficient and it is not greater than necessary  
14 to achieve the purposes of sentencing. That's my  
15 argument. Thank you.

16 THE COURT: You want to respond?

17 MS. FITZGIBBON: Yes, your Honor. I do think  
18 that there's been an attempt to minimize and in even  
19 using the term jokey with these films. There's nothing  
20 jokey about these films and --

21 THE COURT: I hope you understand, I fully  
22 understand that I think he is referring to the fact that  
23 while they were the, the victim was in the film, there  
24 were various times where they were laughing over things  
25 that were somewhat embarrassing to them while they were

1 making the film, and that's all that -- I know that Mr.  
2 Moir isn't in any way trying to suggest that this was  
3 lighthearted or anything else.

4 MS. FITZGIBBON: And Mr. Moir may not be but  
5 the testimony you heard at trial was the defendant  
6 definitely did laugh about them, and she laughed about  
7 them on numerous occasions. She laughed about them when  
8 she is showing them to other people. When she showed  
9 them to Brandon Ore, she particularly pointed out that  
10 embarrassing moment the child has on the video and made  
11 him laugh.

12 When Mr. Hardy, the self-admitted Crip  
13 testified, he said that he heard her showing it and  
14 laughing.

15 So, not only did she objectify her daughter in  
16 the creation of the film, then she repeatedly used them  
17 to get -- because they just continued to amuse her. And  
18 I would suggest, your Honor, and just for the record,  
19 there were clips shown to the jury for certain, we  
20 narrowed that evidence as appropriate for presentation  
21 to the jury, I don't have off the top of my head the  
22 exact minute for each of those videos, but they were not  
23 as short as shown to that jury. And Count Seven is a  
24 seven-minute long video. You have seen many cases  
25 prosecuted here where the clips are much, much shorter.

1 Seven minutes in child pornography is a very long video.

2 THE COURT: I don't attach any special  
3 significance to the length of the clips. You want to  
4 respond to his argument -- one of his arguments is that  
5 the principal purpose driving the lengthy sentences for  
6 production is to try to get at people who are  
7 commercially exploiting child pornography for financial  
8 gain, and this isn't one of those cases he argues, and  
9 therefore it is inappropriate to treat it as among the  
10 more serious kinds of child pornography manufacturing  
11 cases one can have. Would you -- I suggested a response  
12 to that. The response to that is because of the  
13 betrayal of trust here and the damage done to the victim  
14 by her own mother exploiting her for personal sexual  
15 gratification, that the damage here is particularly  
16 egregious and does make this one of the more serious  
17 types of child pornography production offenses one can  
18 have, even though there was no intent to commercially  
19 exploit. Do you have any additional response that you  
20 want to offer on that?

21 MS. FITZGIBBON: I would say in addition to  
22 that and in addition to the harm, yes, your Honor. Not  
23 only, even notwithstanding no commercial distribution,  
24 this is one of the worst cases this court has ever seen,  
25 at least in my 15 years of prosecuting child --

1           THE COURT: Well, I mean, Judge McAuliffe  
2 recently sentenced someone who was a bus driver of  
3 people who were developmentally disabled I believe.

4           MS. FITZGIBBON: Yes, your Honor.

5           THE COURT: And were sexually abusing them and  
6 making films of that. That arguably tops this one in  
7 terms of the, just the complete egregiousness of the  
8 offense, but this certainly is -- and I had one with you  
9 where you were arguing for a much lower sentence of  
10 someone who exchanged sexual abuse of their own child  
11 videos with another pedophile in discussions where they  
12 would come together and go to Vermont to go to a  
13 shopping mall to kidnap a child and abuse them, and you  
14 asked for a lower sentence, much lower sentence in that  
15 case than this one.

16          MS. FITZGIBBON: On that other pedophile,  
17 there were both evidentiary issues as well as other  
18 concerns and different statutory sentences in play at  
19 the time. But in this case, your Honor, and I'm asking  
20 you to look at not just the episodes, it's bad enough  
21 the episodes of child pornography here, but the  
22 overwhelming picture that you've been presented, and  
23 even your Honor doesn't still have all of the  
24 information that could have been presented with regard  
25 to the --

1           THE COURT: Well, if you think I should have  
2 more information than I have, you should give it to me.

3           MS. FITZGIBBON: All I'm saying, your Honor,  
4 is at some point there had to be a stop. There was an  
5 overwhelming house of danger and depravity that was  
6 getting worse each day, starting with Brandon Ore who  
7 came to visit and was told, your Honor very correctly  
8 pointed out, he was told you can come back and have sex  
9 if you bring a friend. He was used to bring more young  
10 men into that house.

11           So there's the ongoing harm that's getting  
12 worse every day. More drugs, more alcohol, more  
13 dangerous people.

14           THE COURT: One thing that is -- that we  
15 haven't mentioned that in my mind was quite upsetting  
16 during the course of the trial were the defendant's  
17 recorded telephone calls at the prison in which it was  
18 suggesting, she was suggesting in those calls, again,  
19 trying to shift blame to her own daughter for the abuse  
20 that she inflicted on her daughter. Is that a  
21 legitimate factor that I can consider in sentencing the  
22 defendant?

23           MS. FITZGIBBON: Absolutely. And it's in our  
24 sentencing memorandum, yes, that it was -- at one point  
25 there's even a statement with expletives that it's not

1 my fault, it's her fault, she met that kid in Canada.  
2 Well, in fact, the victim did meet the young boy on  
3 Skype, and when Ms. Biron discovered it, then she had to  
4 engage in a sexual relationship. And as she told in the  
5 psychologist report, it was her idea, let's go to  
6 Canada, and she related to other friends, so we took  
7 ourselves up to Canada. She met this young 19-year-old  
8 and decided she wanted a sexual relationship with him as  
9 well, and let's bring the child up there and engage in  
10 this child pornography production.

11 So yeah, that wasn't the only phone call we  
12 played for you at trial. And even after the commission,  
13 this is I wasn't criminally responsible, I didn't intend  
14 anything. Well, she picked up a camera and walked  
15 around. That clip includes a narration of the room, I  
16 mean, we showed a smaller clip, your Honor, but that  
17 film is here we are in Canada, here's the room, here's  
18 the drugs, here's the booze. I mean --

19 THE COURT: That attempt to shift blame even  
20 after she had been arrested and the existence of  
21 overwhelming evidence of her guilt, to continue to try  
22 to place blame on the victim for her own victimization  
23 of the child is really quite troubling to me.

24 MS. FITZGIBBON: Yes, your Honor, and I note  
25 that I think we didn't touch on this, but the acceptance

1 of responsibility argument was --

2 THE COURT: I think you must have abandoned  
3 that because you didn't pursue it.

4 MS. FITZGIBBON: Yes. Because you're right,  
5 there has never been an acceptance at all of the  
6 criminal responsibility. In fact, there's been a  
7 shifting to the victim herself during the course of  
8 this. And there was also the, you know, I also think  
9 the court should very much take into consideration the  
10 young people drawn into this crime. Now, Brandon Ore  
11 and Kevin Watson, 18 and 19 years old respectively, so  
12 they are technically adults, and they are not without  
13 some criminal culpability here, but they are lured into  
14 a world of drugs, drinking, and becoming part of one of  
15 the worst felonies possible, creating child pornography.

16 THE COURT: I'm not sure that I would increase  
17 the defendant's sentence length because she was involved  
18 with other adults even though they were young adults. I  
19 agree that, while I don't know what the laws are in  
20 Canada with respect to alcohol, but clearly she was  
21 providing access and places where drugs and alcohol  
22 could be consumed by people who couldn't legally do  
23 that. But to me I'm not sure that it would be  
24 appropriate to give a longer sentence because these  
25 adults, although young adults, were involved with her in

1 these activities.

2 MS. FITZGIBBON: I would ask, though, your  
3 Honor, that though you have identified the primary harm  
4 here, the complete and utter abandonment and trust and  
5 the criminal exploitation of this child, that when you  
6 are considering a sentence under the protection of the  
7 public and other factors to take into account, it's very  
8 worth noting the kind of lifestyle, the exact  
9 circumstances that was going on at the Biron residence  
10 during that time. That was a house that daily was full  
11 of strange men, anonymous men coming and going, alcohol,  
12 drugs, a loaded weapon, and a child in the house at the  
13 time. I mean, she was creating a very dangerous  
14 situation. As she tells the psychologist, the guys show  
15 up, announce themselves as Crips. She says get out, but  
16 then says, all right, come in, and then engages in a  
17 four-way sex act with them while the child is in the  
18 house. That's a danger to the community going on. You  
19 have Crips walking into the house where you have drugs,  
20 a loaded weapon, and this kind of criminal activity  
21 taking place.

22 THE COURT: Again, I'm not sure that would  
23 affect my sentencing judgment in any substantial way.  
24 But in your memorandum there are many other additional  
25 pieces of evidence regarding her involvement with the --

1 of the victim with sex with multiple men, and I think  
2 that exploitation of the victim clearly suggests that  
3 this conduct was not a product of isolated poorly  
4 thought out spontaneous action. This was part of a  
5 deep-seated pattern in which the defendant engaged in a  
6 number of carefully planned acts to, again, to pursue  
7 her own interest in sexual gratification through sex  
8 with young men by using her daughter as a lure to  
9 attract them and to have sex with them when she  
10 otherwise wouldn't have been able to attract them to  
11 have sex with them. That seems to be what the case is  
12 primarily about.

13 MS. FITZGIBBON: I believe her words were,  
14 your Honor, to the therapist, it was like a hunt. It  
15 was fun. Yes.

16 THE COURT: All right. Thank you. Did you  
17 want to present, I'm going to have to -- I want to play  
18 the victim impact statement. Is there any additional  
19 evidence that you want to present?

20 MR. MOIR: No, actually, I would stand upon  
21 the arguments that are made in the sentencing memorandum  
22 and I think that's sufficient.

23 THE COURT: All right. Thank you. Have we  
24 been able to set that up to play?

25 THE CLERK: I think so, your Honor.

1 THE COURT: Okay.

2 MS. FITZGIBBON: It will just take a moment,  
3 your Honor.

4 THE COURT: Vinny, can you help her. She's  
5 not able to connect to our system.

6 THE CLERK: Sure, your Honor, I'm just making  
7 sure we have the sound up all the way.

8 (Pause.)

9 THE COURT: This is going to take a while, so  
10 why don't we take a little pressure off of you by taking  
11 a break, and when you get it functioning, maybe we can  
12 bring in a different laptop that has a more powerful  
13 sound card in it or something. The laptop itself should  
14 be able to broadcast at a higher volume than that.

15 MR. CHIAVARAS: Your Honor, it is, but the  
16 audio itself is very low.

17 THE COURT: It was poorly made you mean?

18 MR. CHIAVARAS: Yes, the audio on the video  
19 itself is low. So if we can, I'd like to try to hook it  
20 up to a different input in our court system and that  
21 might --

22 THE COURT: Let's take a short break and we'll  
23 come back when it's ready to go.

24 (Recess taken.)

25 (Victim impact statement being

1                   played.)

2                   THE COURT: All right, Ms. Biron, you have an  
3                   opportunity to speak if you want to. You don't have to  
4                   say anything. I won't hold it against you if you don't.  
5                   If there is anything you want to say, I'll be happy to  
6                   hear it. Did you want to say anything?

7                   MR. MOIR: She as a brief statement, your  
8                   Honor.

9                   THE DEFENDANT: Thank you, your Honor. In  
10                  July of 2011 my world crashed and I fell apart. Dr.  
11                  Burnes called it a synergistic meltdown with regression.  
12                  I still don't understand it and I can't explain it. I  
13                  was completely out of control and drinking about a half  
14                  gallon of whiskey every other day. I have failed as a  
15                  Christian and as a Christian mom. Being separated from  
16                  my daughter is the greatest pain that I have ever felt.  
17                  Baby, I am so sorry.

18                  THE COURT: All right. Did anybody want to  
19                  say anything else before I impose sentence?

20                  MS. FITZGIBBON: No, your Honor.

21                  THE COURT: Let me just review with the  
22                  probation officer. Count One is ten years to life.  
23                  Counts Two through Seven are 15 years to 30.

24                  PROBATION OFFICER: That's correct, your  
25                  Honor.

1 THE COURT: And Count Eight is what?

2 PROBATION OFFICER: Zero to 10 years.

3 THE COURT: Ten max, okay. All right, I need  
4 to say that I'm going to give a sentence of 40 years  
5 here, and let me explain my thinking.

6 First, I am unpersuaded by the defendant's  
7 arguments for a variance. I respect counsel and I  
8 commend counsel here who has been appointed to represent  
9 the defendant. I think you have performed your duties  
10 admirably. You've been of help to the court and I  
11 couldn't ask for more from you. But I am ultimately not  
12 persuaded by the arguments that you have presented here.

13 I find very little in the defendant's  
14 background to be worthy of mitigation here. I recognize  
15 that she had drug and alcohol problems. I recognize  
16 that she was experiencing great stress in her life. And  
17 I know you didn't argue that those were excuses. But  
18 you were presenting them in part in support of an  
19 argument for a variance. And I don't believe that they  
20 were present to a degree that would in any way support a  
21 variance here.

22 As I said, I think that this is an  
23 extraordinarily egregious pattern of criminal behavior,  
24 and I can think of very few patterns of behavior that  
25 are more serious than that. I think the damage that you

1 have done to your daughter is incalculable. I think the  
2 indifference that you showed her is shocking to me.  
3 That you were willing to exploit her for your own  
4 personal sexual gratification is shocking and it makes  
5 your crime so serious and requiring such a lengthy  
6 sentence.

7           So, I am not persuaded by any of the arguments  
8 for variance. I recognize that this is not a case that  
9 involves commercial distribution of pornography, but I  
10 believe that it is otherwise an extraordinarily serious  
11 course of criminal conduct that does require a very  
12 substantial period of incarceration.

13           In looking at the sentencing statute my  
14 primary concern in this case is achieving a sentence  
15 that is a just sentence. And a sentence of 40 years is  
16 equal, in my view, and not greater than necessary to  
17 achieve the purposes of the sentencing statute in  
18 arriving at a just sentence. I simply cannot support  
19 the view that any sentence less than 40 years would do  
20 justice to this course of criminal conduct.

21           I understand the government's point, that a  
22 sentence of longer than 40 years should be required. In  
23 practical terms I think the government would acknowledge  
24 there's not much practical difference between a 40-year  
25 and a hundred-year sentence in this case. The defendant

1 is 43 I believe. Even with good time credit she will be  
2 well into her seventies before she would be eligible for  
3 release. And I respect the fact that a life sentence  
4 could be asked for here and could be given.

5 I'm not imposing a life sentence and I'm  
6 varying from that life sentence primarily for one  
7 reason. And that is I believe that it's important that  
8 the victim in this case know that I have heard her. In  
9 my view she has been so seriously harmed by her mother.  
10 So seriously damaged. She has so much work to do to  
11 recover from that victimization that we need to be  
12 sensitive to things that may aid in that process. And I  
13 think, having watched this video, I think it's important  
14 that she know that the judge heard her. She's at an age  
15 where she feels that it's important to be heard. She  
16 wanted to address me. She wanted me to hear her. And I  
17 want her to know that I heard her. Because I think that  
18 will be helpful to her in her rehabilitation. Over time  
19 I hope she will come to see the truth, which is that her  
20 mother is the victimizer and she is a completely  
21 innocent victim. But I want right now to help her deal  
22 with that guilt, and I want her right now to know that I  
23 take her concerns seriously, and to some extent I have  
24 tried to address those concerns. Now, I'm not willing  
25 to cede the responsibility I have to the public to

1 insure that a just sentence is imposed in this case. In  
2 other cases where victims, minor victims have expressed  
3 requests for leniency, if you will remember the case of  
4 the Internet gamer, what was the game, World of Warcraft  
5 case, there the child victim wanted to have a continued  
6 relationship with the defendant who was taking her, had  
7 her kidnapped to abuse her, and I would not impose a  
8 lighter sentence there because it was quite clear to me  
9 that I would be harming her by doing so. So I'm not  
10 ceding responsibility to the victim here. I'm  
11 recognizing that my principal responsibility in  
12 sentencing is to insure that the public interest in a  
13 just sentence is vindicated. That society is protected  
14 from the defendant. That the general deterrent  
15 considerations that underlie the sentencing statute are  
16 enforced. But I do think on the margin, in a case like  
17 this, a victim's interest should be considered in my  
18 judgment and I recognize it can be debated. Showing her  
19 that I am taking into account her concerns to this small  
20 degree will in my judgment be beneficial to her.

21 And so for that reason I am going to vary from  
22 the life sentence called for by the guidelines and  
23 instead impose a sentence of 40 years, which is  
24 480 months?

25 PROBATION OFFICER: That's correct, your

1 Honor.

2 THE COURT: Does anybody need me to explain  
3 further my sentence in this case?

4 MS. FITZGIBBON: No, your Honor.

5 MR. MOIR: No, your Honor.

6 THE COURT: All right. Let me read the  
7 proposed sentence:

8 Pursuant to the Sentencing Reform Act of 1984  
9 it is the judgment of the court the defendant Lisa Ann  
10 Biron is hereby committed to the custody of the Bureau  
11 of Prisons, to be in prison for a term of 480 months on  
12 -- Count One is the life sentence count?

13 PROBATION OFFICER: Yes, your Honor.

14 THE COURT: 480 months on Count One. And  
15 360 months on Counts Two through Seven. Those are  
16 30-year counts?

17 PROBATION OFFICER: Yes.

18 THE COURT: To run concurrent, all this is to  
19 run concurrent.

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: And 10 years on --

22 PROBATION OFFICER: 120 months on Count Eight.

23 THE COURT: 120 months on Count Eight.

24 PROBATION OFFICER: Yes.

25 THE COURT: All such terms to run

1 concurrently. This produces a total sentence of  
2 40 years.

3 Much of the rest of this sentence is required  
4 that I impose, even though I recognize practically there  
5 will not be any substantial likelihood of release under  
6 these conditions, but in the event that the defendant  
7 were to be released on supervised release, the defendant  
8 shall be placed on supervised release for a term of life  
9 on each of Counts One through Eight, all such terms to  
10 run concurrently.

11 Within 72 hours of release from the custody of  
12 the Bureau of Prisons the defendant shall report in  
13 person to the probation office in the district to which  
14 the defendant is released.

15 While on supervised release the defendant  
16 shall not commit another federal, state or local crime,  
17 shall comply with the standard conditions that have been  
18 adopted by this court, and shall comply with the  
19 following additional conditions:

20 The defendant shall not illegally possess a  
21 controlled substance.

22 The defendant shall not possess a firearm,  
23 destructive device or any other dangerous weapon.

24 The defendant shall submit to DNA collection.

25 The defendant shall refrain from any unlawful

1 use of a controlled substance.

2 The defendant shall submit to one drug test  
3 within 15 days of placement on supervision and at least  
4 two periodic drug tests thereafter, not to exceed 72  
5 drug tests per year of supervision.

6 The defendant is required to register  
7 initially and to keep this registration current in each  
8 jurisdiction where the defendant resides, works and  
9 attends school.

10 In addition, for initial registration purposes  
11 only, the defendant must register in the jurisdiction  
12 where she's convicted if she does not reside in the  
13 jurisdiction. The defendant must initially register  
14 before completing imprisonment.

15 The defendant shall pay any financial penalty  
16 that is imposed by this judgment and that remains unpaid  
17 at the commencement of the term of supervision.

18 The defendant shall comply with the following  
19 special conditions:

20 The defendant shall participate in a program  
21 of mental health treatment as directed by the probation  
22 officer until such time as the defendant is released  
23 from the program by the probation officer. The  
24 defendant shall pay for the cost of treatment to the  
25 extent she's able as determined by the probation

1 officer.

2           The defendant shall participate in a sex  
3 offender assessment as directed by the supervising  
4 officer.

5           The defendant must participate in a  
6 specialized sex offender treatment program. The  
7 defendant shall pay for the cost of treatment to the  
8 extent she is able as determined by the probation  
9 officer.

10           The defendant must submit to polygraph  
11 examination as a containment strategy for the management  
12 of sex offenders.

13           The defendant may not use sexually oriented  
14 telephone numbers or services.

15           The defendant shall not directly or indirectly  
16 contact the victim or any persons under the age of 18  
17 except in the presence of a responsible adult who is  
18 aware of the nature of the defendant's background and  
19 current offense and who has been approved by the  
20 probation officer.

21           The defendant shall neither possess nor have  
22 under her control any material depicting sexually  
23 explicit conduct as that term is defined in 18 U.S.C  
24 Section 2256(2) involving adults or children. This  
25 includes but is not limited to any matter obtained

1 through access to any computer or any material linked to  
2 computer access devices.

3 The defendant may not loiter within 100 yards  
4 of any schoolyard, playground, swimming pool, arcade or  
5 any other such place frequented by children.

6 The defendant shall consent to a third-party  
7 disclosure to any employer, potential employer,  
8 community service site, or other interested party as  
9 determined by the probation officer of any computer-  
10 related restrictions that are imposed.

11 The defendant is barred from the use of the  
12 Internet and all other media devices with interactive  
13 computer service as defined in 42 U.S.C Section 230(f)  
14 without the prior approval of the probation officer.

15 The defendant shall consent to and cooperate  
16 with unannounced examinations of any computer owned or  
17 controlled by the defendant which may result in  
18 retrieval and copying of all data from the computer and  
19 any internal or external peripherals and may involve  
20 removal of such equipment for the purpose of conducting  
21 a more thorough inspection.

22 The defendant shall submit her person,  
23 residence, office or vehicle to a search conducted by a  
24 U.S. probation officer in a reasonable time and in a  
25 reasonable manner based upon reasonable suspicion that

1 contraband or evidence of a violation of condition of  
2 release may exist. Failure to submit to a search may be  
3 grounds for revocation. The defendant shall warn any  
4 other residents that the premises may be subject to  
5 searches pursuant to this condition.

6           The defendant shall maintain a complete  
7 current inventory of her computer access including but  
8 not limited to any bills pertaining to computer access,  
9 telephone bills used for modem access, or other charges  
10 accrued in the use of a computer.

11           The defendant shall submit a monthly record of  
12 computer use and bills to the probation officer and  
13 shall provide the probation officer with any online  
14 screen names or passwords she uses.

15           The defendant shall not use any software  
16 designed for the purpose of encryption or wiping  
17 computer disk spaces and/or drive.

18           The defendant shall consent to the  
19 installation of a system that will enable the probation  
20 officer or its designee to monitor computer use on any  
21 computer owned or controlled by the defendant. The  
22 defendant shall pay for the cost of installation of such  
23 system to the extent she is able as determined by the  
24 probation officer.

25           The defendant shall pay to the United States a

1 special assessment of \$800 that shall be due in full  
2 immediately.

3 The court finds that the defendant does not  
4 have the ability to pay a fine, the court will waive the  
5 fine in this case.

6 The court recommends that the defendant be  
7 permitted to participate in a sex offender treatment  
8 program while incarcerated if eligible.

9 The defendant is remanded to the custody of  
10 the United States Marshal.

11 I note that to the extent I am permitted to do  
12 so, I would impose the same 40-year sentence regardless  
13 of how I resolved any objections that the defendant made  
14 to the guideline calculation here. As far as I can see,  
15 none of those objections, no matter how I had resolved  
16 them, would have affected my sentencing judgment in this  
17 case, that a sentence of 40 years is equal to and not  
18 greater than necessary to achieve the purposes set forth  
19 in the sentencing statute.

20 Are there any objections to this sentence  
21 other than those previously raised?

22 MS. FITZGIBBON: No, your Honor.

23 MR. MOIR: Only the ones I previously raised  
24 and the ones that are contained in my sentencing  
25 memorandum.

1                   THE COURT: Well, have I failed to address  
2 anything in your sentencing memorandum because I'm happy  
3 to do so now if you'd like me to?

4                   MR. MOIR: I believe you've covered them, your  
5 Honor.

6                   THE COURT: If I did inadvertently omit it, I  
7 want to assure you I've read the sentencing memorandum,  
8 I found your arguments for variance in that memorandum  
9 unpersuasive. To the extent I haven't commented on  
10 them, it's just through inadvertence and I'm not being  
11 asked to do so further here.

12                  MR. MOIR: I'm not asking so.

13                  THE COURT: Okay. Anything else? Okay.  
14 Thank you.

15                  I notify you that you have 14 days from the  
16 date of the judgment to appeal your conviction and  
17 sentence. If you don't file an appeal within 14 days,  
18 you will lose the right to appeal. If you want to  
19 appeal, consult with your attorney and direct him to  
20 file a notice of appeal on your behalf. Or if you  
21 prefer, you can ask the clerk's office for help. But  
22 any notice of appeal does have to be filed within  
23 14 days or you lose your right to appeal. And I impose  
24 the sentencing judgment as I have read it. Thank you.

25                  (Adjourned 4:25 p.m.)

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## C E R T I F I C A T E

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I, Sandra L. Bailey, do hereby certify that

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the foregoing transcript is a true and accurate

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transcription of the within proceedings, to the best of

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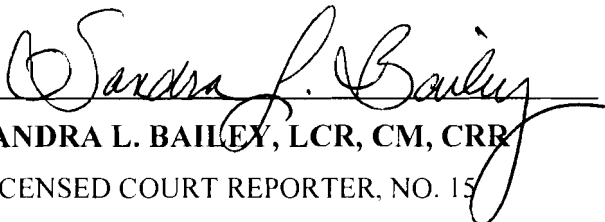
my knowledge, skill, ability and belief.

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11 Submitted: 9/12/13

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**SANDRA L. BAILEY, LCR, CM, CRR**  
LICENSED COURT REPORTER, NO. 15  
STATE OF NEW HAMPSHIRE

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